

SENATE BILL NO. 176

INTRODUCED BY B. CROMLEY

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING STRUCTURAL AND LEGAL SEPARATION BETWEEN A PUBLIC UTILITY THAT IS ENGAGED IN GENERATION, TRANSMISSION, OR DISTRIBUTION OF ELECTRICAL POWER OR NATURAL GAS AND AN AFFILIATE COMPANY THAT PROVIDES MERCHANDISING OF APPLIANCES; ESTABLISHING CERTAIN REQUIREMENTS FOR THE INTERACTION BETWEEN A PUBLIC UTILITY AND AN AFFILIATE COMPANY THAT PROVIDES UNREGULATED BUSINESS SERVICES; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Definitions. As used in [sections 1 through 3], unless the context requires otherwise, the following definitions apply:

(1) "Affiliate company" means any structurally separate and legally distinct company of a public utility that engages in unregulated merchandising of appliances.

(2) "Appliance" includes but is not limited to:

(a) hot air furnaces;

(b) air conditioners;

(c) hot water systems;

(d) hot water heaters; and

(e) any other appliances that are used to heat, ventilate, or cool a residence or a commercial or industrial building.

(3) "Merchandising" means the sale or lease of new, used, or remanufactured appliances and comprises all activities incident to the sale or lease, including but not limited to:

(a) advertising;

(b) promotion;

(c) delivery;

(d) appliance removal;

(e) installation;

- (f) ductwork;
- (g) plumbing;
- (h) ventilation; and
- (i) wiring.

(4) "Public utility" means a public utility, as defined for this chapter, that engages in the generation, transmission, or distribution of electricity or natural gas.

NEW SECTION. Section 2. Structural separation. A public utility shall conduct its unregulated merchandising of appliances subject to the provisions of [sections 1 through 3] only from an affiliate company that is structurally separate and legally distinct from the public utility.

NEW SECTION. Section 3. Requirements of public utility and affiliate company. (1) An affiliate company:

(a) shall maintain books, records, and accounts that must be separate from the books, records, and accounts that are maintained by the public utility;

(b) must have separate employees from the public utility; and

(c) may not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the public utility.

(2) A public utility shall maintain sufficient records to allow for an audit of the transactions between the public utility and its affiliate company. The commission may require a public utility to initiate, at the public utility's expense, an audit of the transactions between the public utility and its affiliate company performed by an independent third party. The public utility shall allow the commission access to the books, records, or other documents of the public utility or affiliate company that may be needed to conduct the commission's investigations and proceedings.

(3) In its dealings with an affiliate company, a public utility may not:

(a) use its status as a monopoly franchise to confer upon its affiliate company any unfair competitive advantage. The public utility shall conduct all transactions with an affiliate company on an arm's-length basis and shall account for all transactions in accordance with generally accepted accounting principles, with any of the transactions reduced to writing and available for inspection by the appropriate state regulatory authorities.

(b) cross-subsidize or shift any costs of an affiliate company's operations to its regulated public utility

1 operations or sell, transfer, or provide the benefit of, or permit the use of or access to, equipment, tangible or
2 intangible assets, or services, including labor, of the public utility unless the transfer, provision, or other use is
3 fully compensated by the affiliate company and the transaction avoids foregoing revenue or creating an unfair
4 competitive advantage over nonaffiliate competitors other than when specifically permitted by law or by order
5 of the commission;

6 (c) provide information or consultation to an affiliate company or other entity within the existing corporate
7 structure regarding a potential business arrangement between that affiliate company or other entity within the
8 existing corporate structure and a potential customer;

9 (d) refer a customer or potential customer to an affiliate company or other entity within the existing
10 corporate structure or steer a potential customer away from a competitor;

11 (e) provide a customer or potential customer with advice or assistance regarding the selection of or
12 relationship with an affiliate company or other entity within the existing corporate structure;

13 (f) share personnel, including its skilled labor, with an affiliate company, make temporary personnel
14 assignments to or intermittent personnel rotations with its affiliate company, or otherwise use movement of
15 personnel as a means of creating a competitive advantage over nonaffiliate competitors;

16 (g) share information obtained by the public utility engaged in generation, transmission, or distribution
17 of electrical power or natural gas in the course of conducting its regulated business directly or indirectly with its
18 affiliate company or other entities within the existing corporate structure without the written consent of the
19 customer; or

20 (h) interfere in any manner in the contractual relationship between a nonaffiliate competitor and its
21 customers.

22 (4) (a) If a public utility provides services, products, or property, including intangible property, to an
23 affiliate company, compensation must be based on the higher of fully allocated costs or the market price.

24 (b) If an affiliate company provides services, products, or property to a public utility, compensation must
25 be based on the lower of fully allocated costs or the market price.

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27 **NEW SECTION. Section 4. Codification instruction.** [Sections 1 through 3] are intended to be
28 codified as an integral part of Title 69, chapter 3, part 2, and the provisions of Title 69, chapter 3, part 2, apply
29 to [sections 1 through 3].
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